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#30/
Decision
on
Petition
TBS

In re Application of: :
JONSSON, Soren :
U.S. Application No.: 08/545,591 :
Filing Date: 13 November 1995 :
For: METHOD AND DEVICE FOR :
FEEDING COMPONENTS FOR :
BONE CEMENT INTO A MIXING :
VESSEL FOR THESE :

DECISION ON PETITION
UNDER 37 CFR 1.182

This decision is in response to applicant's "Request For Reconsideration Of Petition Under 37 CFR 1.183" filed 16 May 2003, which has been treated as a petition under 37 CFR 1.182.¹ Deposit Account No. 13-2725 will be charged the required petition fee. Applicant's "Petition Under 37 CFR 1.182" filed in the present application, 08/545,591, on 04 May 2004, requesting entry of an amendment to the instant application for purposes of obtaining benefit under 35 U.S.C. 120 and 365(c) to international application PCT/SE94/00415, is being treated in a concurrently mailed decision in application number 08/734,817.

BACKGROUND

The background herein was set forth in the decision mailed by this Office on 26 March 2003 (in grandchild application 08/968,034). In that decision, this Office dismissed as untimely applicant's request to have the present national stage application, 08/545,591, treated as a filing under 35 U.S.C. 111(a).

On 16 May 2003, applicant filed the "Request For Reconsideration Of Petition Under 37 CFR 1.183" considered herein, under 37 CFR 1.182.

On 04 May 2004, applicant filed the "Petition Under 37 CFR 1.182" to amend the present application, also considered herein.

DISCUSSION

Applicant argues that, under standard USPTO procedures in place at the time, the conflicting instructions contained in the papers filed to initiate U.S. application 08/545,591

¹ This petition was filed in grandchild application 08/968,034. Because the petition relates to the status of the present application, 08/545,591, the decision is issued herein.

should have resulted in this submission being treated under 35 U.S.C. 111(a), rather than under 35 U.S.C. 371. Applicant is correct that it is USPTO policy to treat national stage filings with conflicting instructions as filings under 35 U.S.C. 111(a) (see 37 CFR 1.495(g) and MPEP § 1893.03(a)), and a review of application 08/545,591 confirms that there were conflicting instructions in the materials filed by applicant on 13 November 1995 to initiate this application. Specifically, the 13 November 1995 submission included a "Voluntary Preliminary Amendment" which requested entry of a "revised specification that includes new matter and will take the actual date of filing and not the international filing date" and which characterized the submission as "in the nature of a continuation in part filing." Accordingly, the present application, filed on 13 November 1995 and accorded U.S. application number 08/545,591, will be treated as a filing under 35 U.S.C. 111(a) using the "revised" specification and additional figures (Figures 7-13) as identified in the "Voluntary Preliminary Amendment" filed 13 November 1995 as the specification and drawings for the present application.

CONCLUSION

Applicant's petition under 37 CFR 1.182 requesting that the present application, 08/545,591, be treated as a filing under 35 U.S.C. 111(a) rather than as the national stage application of PCT/SE94/00415 under 35 U.S.C. 371, is **GRANTED**. Accordingly, the "Notification Of Acceptance Of Application Under 35 U.S.C. 371" mailed 29 January 1996 in 08/545,591 is hereby **VACATED**. The instant application has a filing date of 13 November 1995 under 35 U.S.C. 111(a).

A copy of this decision will be placed in grandchild application 08/968,034 (the application in which the present petition was originally filed).

This application is being forwarded to the Office Of Initial Patent Examination for any further processing deemed necessary using the revised 13 page specification and Figures 1-13 filed 13 November 1995. The application remains abandoned.



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